

# **MINUTES OF THE COMMISSION FOR HUMAN RIGHTS**

**MAY 31, 2007**

**A regular meeting of the Commission for Human Rights was held in the agency conference room on Thursday, May 31, 2007. Present at the meeting were Commissioners Iraida Williams, Alton W. Wiley, Jr. and Dr. John B. Susa, Chairperson, Camille Vella-Wilkinson and Rochelle Lee. Absent were Alberto Aponte Cardona and Randolph Lowman. The meeting was called to order at 9:05 a.m.**

**A motion was made to approve the March 29, 2007 minutes and the April 26, 2007 minutes. The motion was made by Commissioner Williams, seconded by Commissioner Vella-Wilkinson and carried.**

**Status Report: Michael D. Évora, Executive Director-**

**A written report was handed out. All new information was in bold print.**

**Case Production Report - Attached**

**AGED CASE Report - Attached**

## **Outreach Report - Attached**

### **STATUS REPORT - COMMISSIONERS-**

**GENERAL STATUS:** No report at this time.

**OUTREACH:** Commissioner Williams reported that she attended a conference in Washington, DC for Family Voices. Commissioner Vella-Wilkinson reported that she testified on the marriage equality act. She also reported that the Rhode Island Affirmative Action Professionals will be honoring Mr. Clifford Monteiro at its annual luncheon

**Commissioner Meeting -2- May 31, 2007**

**STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt and Francis A. Gaschen**

**LITIGATION:** Report attached. The Commissioners indicated their support for the goal of S1019, but asked staff to convey the adverse financial implications and the need for more concrete standards.

**LEGISLATION:** Legal Counsels discussed pending bills.

**REGULATIONS:** No discussion at this time.

**HEARING SCHEDULE:** Discussed

**DECISIONS:** No discussion at this time.

The meeting adjourned at 10:00 a.m. The next regular meeting of the Commission is scheduled for Thursday, June 28, 2007 at 9:00 am.

**Respectfully Submitted,**

**Michael D. Évora**  
**Executive Director**

**Notes taken by: B. Ross**  
**EXECUTIVE DIRECTOR'S**  
**REPORT TO COMMISSIONERS**

**MAY 31, 2007**

## **I. BUDGET**

**The Commission's budget currently before the General Assembly is as follows:**

	<b>FY 2007</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2008</b>
	<b>(Rev. Req.)</b>	<b>(Revised)</b>	<b>(Request)</b>	<b>(Recomm.)</b>
<b>S</b>	<b>1,038,846</b>	<b>989,630</b>	<b>936,493</b>	<b>984,197</b>
<b>F</b>	<b>286,549</b>	<b>323,679</b>	<b>311,111</b>	<b>404,743</b>
<b>T</b>	<b>1,325,395</b>	<b>1,313,309</b>	<b>1,247,604</b>	<b>1,388,940*</b>

**\*The Commission's original FY 2008 Budget Request contained a 15% cost reduction, as required by the Governor, which would have resulted in the loss of 2.5 positions, leaving the Commission at 12 positions. The budget request before the General Assembly funds the Commission for the full 14.5 positions to which the agency currently is entitled.**

**The Governor recently submitted his recommended amendments to the FY 2008 Appropriations Plan to the General Assembly. We are unaffected by the amendments and remain fully funded at 14.5 FTEs.**

## **II. FEDERAL CONTRACTS**

**EEOC – For federal FY 2007, as of 5/17/07, according to EEOC Project Director Marlene Toribio, we have closed 141 co-filed cases. Our FY 2007 contract with EEOC is for 259 cases; we must close 118 more co-filed cases by September 30 to meet the contract. Each case is now payable at \$550.00.**

**HUD – For FY 07 (7/1/06 to date), according to HUD Project Director Angela Lovegrove, we have taken in 37 new housing charges, 35 of which are co-filed with HUD. Within this same time period, we have processed 39 housing charges, 37 of which were co-filed with HUD.**

### **III. PERSONNEL**

**No activity to report.**

### **IV. OUTREACH – Refer to attached report.**

### **V. GENERAL STATUS**

**&#9679;Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.**

**&#9679;Case Closures – Refer to attached report.**

**&#9679;Aged Cases – Refer to attached report. Progress continues**

to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 86% in FY 2006 (from 14 to 2 cases).

•Commissioner (Re)Appointments – On May 9, Rochelle Lee was confirmed by the full Senate to replace Cmsr. Stover. On May 25, Cmsr. Lee attended an orientation session conducted by Cynthia Hiatt, Frank Gaschen and me.

On May 24, I received a message from Christine DiFilippo (Governor's Office) advising that the Governor had "signed off on" the following: reappointment nominations of Cmsrs. Susa, Vella-Wilkinson and Williams (whose term will expire in July); nomination of former Commission employee Nancy Kolman Ventrone to replace Cmsr. Lowman. These nominations were formally presented to the Senate on May 29.

•Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 06 with 387 cases in inventory. As of 5/17/07, we had a total of 378 cases in inventory.

•Charge – On March 21, the Commission received notification that an Unfair Labor Practice Charge had been filed with the State Labor Relations Board alleging that the Commission/Executive Director had violated the State Labor Relations Act. The Charge was filed by RI Council 94, AFSCME, AFL-CIO. An informal hearing is

**scheduled for May 4, 2007. On April 25, Legal Counsel Cynthia Hiatt and I met with Union Local President Sal Lombardi and Vice-President Stephen Strycharz. The matter was resolved through informal discussion and the charge was dropped with the approval of the Union's attorney.**

**Respectfully submitted,**

**Michael D. Évora  
Executive Director**

**Attachments**

**To: Commissioners**

**From: Cynthia Hiatt and Frank Gaschen, Legal Counsels**

**Re: Litigation**

**Date: May 31, 2007**

**Recent developments are in bold.**

**Aquidneck Island v. RICHR, et al.**

**This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now.**

**Babbitt v. Crescent Park Manor, et al.**

**The Commission intervened as a party plaintiff in this case. Deposition scheduled for next month.**

**Bagnall v. RICHR and WLWC et al.**

**The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. The parties are circulating a briefing stipulation. The complainant's attorney has represented to the Commission that he will file a brief and give the RICHR and respondents whatever reasonable amount of time they would like to file briefs in opposition.**

**Brown University v. RICHR**

**Brown University was seeking a stay of disclosure of Commission records. The hearing date was May 11, 2007. Brown and the complainant reached a resolution on that issue, so the Motion for a Stay was passed.**

**Gaffney v Town of Cumberland et al**

**The respondent appealed the Commission decision. The parties and the Commission filed briefs. The case was assigned to Judge Savage. Judge Savage held a status conference with the attorneys, including Commission counsel, on January 21, 2005. Judge Savage indicated that she was close to issuing a decision but wished to give the parties an opportunity to discuss resolution. After a number of settlement attempts, it did not appear that resolution was near. On**



1/4/06, CMH wrote a letter to the parties stating that if she did not hear from them by 2/6 that the case was close to resolution, she was planning to write Justice Savage to ask her to issue her decision. Not having heard from the parties, on 2/8/06, CMH wrote Justice Savage and asked her to render her decision as it did not appear that the parties would resolve the matter. On November 30, 2006, after seeking signatures from the other parties which could not be obtained, CMH sent a letter asking Justice Savage to consider issuing a decision in the near future because of Mrs. Gaffney's age. New Town Solicitor, Tom Heffner, wrote a letter to Judge Savage on April 25, 2007, asking if she could assist in settlement. He is also talking with complainant's attorney to determine if a resolution is possible. If these efforts are not successful, he may stop by to see the Judge to mention the letter that he sent.

#### **Horn v. Southern Union Co.**

This is a case filed in federal District Court in Rhode Island. Judge Smith certified a question to the Rhode Island Supreme Court: What is the statute of limitations for the Rhode Island Civil Rights Act, Title 42, Chapter 112 of the General Laws of Rhode Island (RICRA) for employment discrimination cases. The RICRA prohibits discrimination in contracts, including discrimination in employment contracts. The Commission has joined an amicus brief, filed on March 15, 2007, that argues that the proper statute of limitations is three years. (The employer is arguing that the statute of limitations is one year.) Oral argument took place on April 9, 2007.

**Idowu v. Rhode Island Commission for Human Rights and Cohoes Fashions of Cranston, Inc.**

**The complainant appealed the Commission Decision and Order. The respondent filed a motion to dismiss the appeal on the grounds that it was filed too late. The Commission filed the administrative record on May 17, 2006. Hearing on the respondent's motion to dismiss was held on June 6, 2006. Judge McGuirl appeared to be ready to rule for the defendants, but offered Mr. Idowu the opportunity to submit more information. He accepted the offer. He retained an attorney who filed a last-minute objection to the motion to dismiss and appeared at the hearing on July 11, 2006. On this date, Judge McGuirl appeared to see the merit of complainant's argument that, even though the decision was dated, the decision did not specifically say that the date was the mailing date. [A party must appeal within thirty days of the mailing date.] However, she did not seem to feel that the document that the complainant filed within thirty-one days of the mailing date was sufficient to constitute a complaint. She stated that she would consider the matter and issue a decision on the motion to dismiss from the bench at a later date. On February 22, 2007, the complainant filed a Supplemental Memorandum of Law relating to the Motion to Dismiss in Superior Court. On February 28, 2007, the respondent filed a Response to complainant's Supplemental Memorandum. On April 12, 2007, Justice McGuirl issued a bench decision denying respondent's Motion to Dismiss. Justice McGuirl held that the appeal was timely because the date on the decision did not give a pro se**

complainant sufficient notice of the mailing date and he therefore could rely on the later date on the envelope, that the “Stipulation” he submitted was sufficient to constitute a complaint and that notice of the appeal was timely. She also raised questions about the credibility determinations of the Commission. She set dates for filing briefs. Mr. Idowu filed his brief on May 11. The Commission filed its brief on May 24 and Cohoe’s filed its brief on May 25. She set the matter down for further hearing on June 8.

#### **Joint v. DeMarkey and Rhode Island Commission for Human Rights**

The individual respondent filed an appeal of the Commission Decision and Order and the Commission Decision on Attorney’s Fees. The Commission filed the administrative record. The briefs were filed. The appeal was assigned to Special Magistrate Joseph Keough. He rendered a decision on September 22, 2006. He held for the Commission on several procedural issues, but reversed the decision, holding that the complainant had not proved sex discrimination. He said that the respondent had waived his right to raise the issue that the charge was not timely filed. He held that the Commission complaint had given the respondent sufficient notice of the charges against him. He overturned the Commission determination that the respondent had discriminated against the complainant because of her sex, holding that it is not sex discrimination if a supervisor terminates an employee because their voluntary sexual relationship has ended. The respondent sent Magistrate Keough a proposed Judgment and Order. There is a procedure for appealing a magistrate’s Order to the Superior Court

for review by a Superior Court judge. The time period for that appeal is short (48 hours), so the Commission filed that appeal on September 27. The matter was scheduled to be heard on the Formal and Special Cause calendar on October 4, 2006. Justice Rogers wrote the parties a letter stating that Chief Justice Williams, in a series of monthly letters, has conferred on Magistrate Keough all the powers of a Superior Court judge and that therefore, appeal was to the Rhode Island Supreme Court. Ms. DeMarkey and the Commission filed a Petition for Certiorari and Memorandum in Support. In the meantime, Mr. Joint's attorney filed a Motion for Attorney's Fees, asking that the Superior Court order the Commission to pay Mr. Joint's attorney's fees under the Equal Access to Justice Act. The parties agreed that this matter would pass until the Supreme Court acted on the Petition for Certiorari. The parties also agreed that the Commission would delay discovery, on the issue of Mr. Joint's eligibility to claim attorney's fees, until after the Rhode Island Supreme Court acted on the Petition. Mr. Joint filed for a third extension of time to file his objection to the Petition. The Commission received Mr. Joint's Objection to the Petition for Certiorari and Memorandum in Support of Objection on February 13, 2007.

#### **King v. City of Providence Police Dept.**

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined

damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. Ms. Hiatt has been subpoenaed to testify at the trial. The trial had been rescheduled to late September. The plaintiff was going to request another continuance; it has apparently been granted. The Commission has received no word on a new trial date.

### **Laboy v. Stat Health Services**

Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.

### **Ledbetter v. Goodyear Tire & Rubber Co., Inc. (U.S. Supreme Court May 29, 2007)**

The U.S. Supreme Court held that a charge is not timely even if a plaintiff is still suffering from the present effect of past discrimination. The plaintiff alleged that her supervisors gave her bad evaluations in the past because of sex discrimination. These bad evaluations factored into lower pay raises for the plaintiff over the years. The plaintiff finally filed an EEOC charge alleging discrimination. The Supreme Court held that she filed too late, as the employer did not have discriminatory animus or commit a discriminatory action within the time period for filing the charge. [It is still true that a complainant can file a charge of discrimination if the employer sets up a discriminatory pay structure and the complainant

receives a paycheck within the statutory time period. However, in the Ledbetter case, the discrimination was not within the pay structure itself but in the evaluations which had occurred in the past.]

## **Pilkington US AGR Auto Glass Replacement and Theroux v. D'Alessio and RICHR**

Pilkington and Mr. Theroux have filed an appeal of the Commission Decision and Order. They made a motion to stay the Commission Order. The Court denied the motion to stay with respect to the Commission's order that the respondent post the Commission poster. The Court granted the motion to stay with respect to the rest of the Order, but Commission Counsel's request that the respondent be ordered to post a bond of \$300,000 was granted. Briefs and the administrative record were due to be filed in court by May 17, 2007. The administrative record was filed May 16, 2007. The due dates for the briefs have been extended, the respondent's brief is now due on June 7 and the brief of the complainant and the Commission is due on July 9.

## **Ponte v. GTECH**

The plaintiff filed a records subpoena for her case file, several named case files and any other disability charges against GTECH. The Commission provided copies of the complainant's cleared file. The Commission objected to providing any other records on the grounds that such dissemination would violate the Health Care Confidentiality

**Act and that redaction of the health care information would be burdensome. Case not settled, so RICHR got an extension from Court to comply with Order. Compliance commenced. Notice has been given to the complainants whose files were subpoenaed and they have until June 4, 2007 to raise objections to disclosure of their health care information. One objection has been filed.**

#### **RICHR and Butler v. Kong**

**The complainant elected to have this housing matter resolved outside of the Commission so RIHCR has brought suit. Discovery responded to. Offer to compromise has been sent and I am to receive a response shortly.**

#### **RICHR and Rossi v. Attruia**

**A complaint for enforcement was filed and judgment entered against Defendant. Payments on the judgment are now made directly to individual complainant.**

#### **RICHR v. Cardinale**

**Justice Thunberg has entered a Decision for RICHR on a Petition for Enforcement. Negotiating language of Order with defendant's attorney. Will be filing Motion for Entry of Order for hearing in July.**

#### **RICHR v. Cardinale, et al.**

**A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act has been filed against Norman**

**Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. A lis pendens was filed in the Land Evidence Records for the town of Scituate. Discovery commenced. Motion to dismiss the complaint has been filed by AEGIS and MERS; hearing in August.**

**RICHR v. Cardinale, et al.**

**A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against Norman Cardinale, Mary Cardinale, Onorato Cardinale, Rebecca Anthony and Aquidneck Island Developments, LLC. Discovery commenced.**

**RICHR and Powell v. Cinotti**

**The respondent elected to have this housing matter resolved outside of the Commission. Respondent made offer to settle and the complainant agreed. Two checks received and sent to the complainant; two left to be paid.**

**RICHR and Lovegrove v. Escolastico**

**RI judgment was obtained and sent to FL lawyer for collection. The FL attorneys have determined that he has very few assets and a small salary. Case settled and monthly payments to commence.**

**RICHR and Morin v. Teofilo Silva, et al.**

**A complaint for enforcement was filed on 3-24-05. Service of the**



**complaint will be made once respondent can be located. Motions for extended time within which to serve and for special service were filed. The motions were granted. Service has not been perfected yet.**

**RICHR and Zeigler v. Laura Sitrin, Finance Director of the City of Newport**

**Case resolved. Commission must annually monitor City training. Counsel Gaschen is planning to send notice to the city regarding the annual training.**

**Seymour v. Harvard Pilgrim Health**

**Motion of the defendant to dismiss the complaint for failure to comply with discovery was down for hearing on May 7, 2006. Plaintiff produced discovery, case is moving forward in Court. Case should be settled very shortly.**

**South Kingstown School Committee et al. v. Stephen Alberghini and the Rhode Island Commission for Human Rights**

**The respondents have appealed the Commission Decision and Order. The parties have agreed that the Commission will delay filing of its record until motions pending before the Commission have been decided. The complainant died on May 20, 2007.**

**Tucker v. Blue Cross**

**The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in**

**Court.**